

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

In re: Mortgage Foreclosure Cases

Misc. No. 11-mc-88-M-LDA

**CERTAIN DEFENDANTS' RESPONSE TO THE COURT'S  
SEPTEMBER 18, 2013 SHOW CAUSE ORDER (DOC. NO. 2258)**

Certain Defendants object to the Special Master's September 16, 2013 request for approval of bills for services rendered from August 1, 2013, through August 31, 2013. This month, the Special Master submits costs and expenses totalling \$56,202.94 for continuing work on the Court's mandatory mediation program. (*See* Invoice No. 19, dated 9/16/13). As with every prior reimbursement request, the Special Master seeks payment of fees and costs for a mandatory mediation program that contravenes federal law in the absence of any time and cost limits, as explained in *In re Atl. Pipe Corp.*, 304 F.3d 135, 147 (1st Cir. 2002), and which presently ignores and disregards the First Circuit's remand order in *Fryzel v. Mortgage Elec. Registration Sys., Inc.*, 719 F.3d 40, 42-46 (1st Cir. 2013).

The First Circuit has found error in this Court's omission of procedural safeguards in its mandatory mediation program; in particular the absence of "prospective limits on the period within which mediation must be completed and on the costs to which the parties may be subjected." *Fryzel*, 719 F.3d at 45. The First Circuit remanded the consolidated appeal cases assigned to the *In re Mortgage Foreclosure Cases* docket with instructions to "establish specific limits of time and expense if the reference for mediation is to remain in effect." *Id.* at 42. More specifically, the First Circuit directed this Court, if cases were to remain on the consolidated

docket, to schedule a second hearing promptly to decide whether the mediation order should continue and what time and costs limits should be set. *Id.* at 46.

Following the First Circuit's *Fryzel* decision, this Court issued an order that dissolved the injunction of foreclosure and eviction proceedings, but which continued the assignment of all mortgage foreclosure cases to the consolidated docket and maintained the stay of litigation so that the Special Master could proceed with mandatory mediation. (See Memorandum & Order, Doc. No. 2249) Although the Court noted that it would meet with counsel to determine the most efficient and effective way to handle the mediation program going forward, the Court has not scheduled any such hearing. Moreover, the Court has not at any time addressed appropriate time and costs limits for the mediation program despite repeated requests from these defendants and despite the First Circuit's remand with directions to do so in *Fryzel*, 719 F.3d at 42, 45-46. Accordingly, these defendants object to any order authorizing reimbursement of the Special Master's costs, fees and expenses for continuing to operate a mandatory mediation program without any time limits, cost limits or other procedural safeguards.

In further support of this objection, these defendants incorporate by reference all arguments and concerns presented within their past objections. (See Doc. Nos. 2243, 2227, 2170, 2146, 2117, 2096, 2075, 1963, 1439).

Respectfully submitted,

FEDERAL NATIONAL MORTGAGE ASSOCIATION  
AND SPECIALIZED LOAN SERVICING, LLC

By Their Attorneys,

*/s/ Maura K. McKelvey* \_\_\_\_\_

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Dated: September 23, 2013

**CERTIFICATE OF SERVICE**

I, Maura K. McKelvey, hereby certify that the foregoing document was filed through the Court's ECF filing system and that a copy of the same will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on September 23, 2013.

*/s/ Maura K. McKelvey*

Maura K. McKelvey